

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5189 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

UNION BANK OF INDIA

Appearance:

MR SK JHAVERI for Petitioner
MR UDAY R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 08/08/2000

CAV JUDGMENT (per D P Buch, J.)

This appeal is filed by Municipal Corporation of Ahmedabad under Section 411 of the Bombay Provincial Municipal Corporation Act, 1949 challenging the judgment and order recorded by the learned Judge of the Small Causes Court at Ahmedabad dated 30.12.1991 reducing the Gross Rateable Value in respect of property of the respondent from Rs.66,549/- to Rs.47,064/- for the year 1989-90. The respondent bank had filed Municipal Valuation Appeal being M.V. Appeal No.3775/90 before the Court of Small Causes at Ahmedabad against the assessment of Gross Rateable Value at Rs.66,549/- made by the present appellant for the premises bearing survey No.161/1/3/1/3 which is shown as special property residence.

2. The Court below found that the appellant did not calculate the GRV properly and, therefore, it reduced the GRV to Rs.47064/- from Rs.66,549/- fixed by the appellant.

3. Feeling aggrieved by the said judgment and order of the Court of Small Causes, the appellant has filed this appeal under Section 411 of the BPMC Act before this Court.

4. It has been mainly contended that the property tax is being paid by the tenant directly to the appellant and hence the lower court has deducted the amount of tax for the purpose of fixing the GRV. That, the lower court has committed material illegality in arriving at the said decision. That the lower Court should have taken into consideration the rent as well as property tax while deciding the GRV. That, the judgment and order of the lower court are thus illegal and erroneous and deserve to be set aside. The appellant, therefore, prays that the judgment and order of the lower court be set aside and the GRV of the premise in question be fixed having regard to the rent and the property tax.

We have heard the learned Advocates for the respective parties and perused the papers.

5. It appears from the record that while reducing the Gross Rateable Value, the learned Judge has

considered that the property tax was being paid by the tenant i.e. the respondent directly to the appellant and, therefore, that amount of tax is required to be deducted and after the deduction, the balance should be treated as Gross Rateable Value for the purpose of assessment. It is settled legal position that, if a tax is required to be borne by the tenant, the same has to be included in the amount of rent for arriving at GRV of the premises. This can be gathered from a decision in the case of Municipal Corporation of City of Ahmedabad v. Canara Bank, Ahmedabad, (1993 (1) GLH 180). The said decision was delivered by the Full Bench of this Court.

6. Learned Advocate for the respondent has vehemently contended that the appellant has been taking undue advantage of the aforesaid judgment which was pronounced subsequent to the decision recorded by the learned Judge, Small Causes Court. He has also submitted that there is legal and factual malafide inasmuch as though the present appellant could apply for certified copy of the judgment of the learned Judge, Small Causes Court soon after pronouncement of the judgment, it was not done intentionally and the certified copy was applied for only after the aforesaid judgment of the Full Bench (supra) was rendered. It is further submitted that the appellant was late in filing the appeal and, therefore, the application for condonation of delay was filed and it was wrongly submitted in it by the appellant that through oversight, the application for certified copy was filed late. That therefore, on the aforesaid incorrect facts, the application for condonation of delay was submitted and it was allowed accordingly.

7. In view of the above, we are of the opinion that when the application for condonation of delay filed by the present appellant under Section 5 of the Limitation Act has been allowed and the delay has been condoned by this Court after hearing the parties, it is not open now to the respondent to argue that there was legal and factual malafide and the aforesaid application was wrongly allowed on wrong consideration and on incorrect facts. This Court cannot go behind and beyond the decision recorded in the said Civil Application filed by the appellant for condonation of delay. Therefore, we do not propose to consider the aforesaid argument of the learned Advocate for the respondent. Then the fact remains that as per the decision of the Full Bench referred to hereinabove, it is well settled that the rent as well as tax both are required to be considered for

assessment purpose and if that is not done, the judgment and order of the lower court deserve to be quashed and set aside and the appellant is right in arguing that the tax and rent both are required to be considered together for the purpose of assessment of GRV,

8. It is, therefore, clear that the lower court has committed error in deducting the amount of tax while ascertaining the GRV. The judgment and order of the lower court are, therefore, illegal and erroneous.

9. In the aforesaid view of the matter, and in view of the well settled principles, the judgment and order of the Small Causes Court deserve to be quashed and set aside and the matter is required to be remanded to the Small Causes Court with a direction to decide the appeal in view of the decision of the Full Bench of this Court referred to above.

10. In the result, this appeal is allowed. The judgment and order passed by the learned Judge, Small Causes Court, No.3, Ahmedabad in M.V.Appeal No.3775/90 dated 30.12.1991 are set aside. The matter is remanded back to the Court of Small Causes at Ahmedabad with a direction to decide the appeal afresh having due regard to the decision of this High Court rendered in 1993(1) GLH 180 (supra) after giving reasonable opportunity to the parties of being heard. Since the appeal is an old one, the lower Court is directed to dispose of the same within three months from the date of receipt of this order. Accordingly the proceedings shall be sent back forthwith. Considering the facts and circumstances of the case, there shall be no order as to costs.

[M H Kadri, J.]

[D P Buch, J.]

msh.